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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/136,820	08/19/98	SIMON	30-277

MMC2/0119

BACHMAN & LAPOINTE  
SUITE 1201  
900 CHAPEL STREET  
NEW HAVEN CT 06510-2802

EXAMINER  
PONOMARENKO, M.

ART UNIT	PAPER NUMBER
2034	

01/19/01  
**DATE MAILED:**

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/136,820</b>	Applicant(s) <b>Simon</b>
	Examiner <b>Nicholas Ponomarenko</b>	Group Art Unit <b>2834</b>

Responsive to communication(s) filed on Oct 12, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-19 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-19 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-19** are rejected under 35 U.S.C. § 101 because the disclosed invention is inoperative and therefore lacks utility.

The disclosed invention contradicts the principle of the conservation of energy. The disclosed device supposedly will output useful energy or perform useful work without any external input of energy, which is in conflict with the principle of the conservation of energy.

### ***Doctrine or principle of the conservation of energy.***

If the boundary considered includes the universe, the principle of the conservation of energy amounts to a statement that the sum total of the energy of the universe is a fixed unalterable quantity.

The principle of the conservation of energy also denies the possibility of "perpetual motion." By "perpetual motion" is meant the devising of some arrangement so that energy in one form can be produced without energy in some other form being used up by the machine. Thus if an engine could be made to do work on external bodies for an indefinite time, and thus give out

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energy, without being supplied with energy from without, or diminishing the stock of energy in all its various forms which it originally possessed, we should have a means of creating energy, and this is in direct contradiction to the principle of the conservation of energy.

When a patent applicant presents an application describing an invention that contradicts known scientific principles, or relies on previously undiscovered scientific phenomenon, the burden is on the examiner simply to point out this fact to the appellant... The burden shifts to appellant to demonstrate either that his invention, as claimed, is operable or does not violate basic scientific principles, or that those basic scientific principles are incorrect. *As stated by the Patent Office Board of Appeals, Newman v. Quigg 681 F.Supp 16, at 18, 5 U.S.P.Q. 2d 1880(1988).*

**Applicant is required to furnish a working model of his invention in order to demonstrate its operability. See MPEP § 608.03.**

***Response to Arguments***

3. Applicant's arguments filed with Amendment A have been fully considered but they are not persuasive.

Applicant's amendment and arguments have not changed the working structural elements of the earlier rejected claims, and clarified or enabled the external power

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source, which is still not present. The applicant just stated that on page 13, lines 22-29, a source of external power is disclosed, which is not true.

*Conclusion*

4. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. When the claims are amended, applicant(s) should state in detail where in the original disclosure or in the drawings the amended features find support. **No new matter may be introduced.**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Nicholas Ponomarenko** whose telephone number is **(703) 308-1776**.

7. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, Mon-Fri, 8 am-530 pm

Phone: (703) 308-0956

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**Nicholas Ponomarenko  
Primary Examiner  
Art Unit 2834**

np

January 17, 2001